



Federal Communications Commission

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Small Entity Compliance Guide

**Promoting Technological Solutions to Combat
Contraband Wireless Device Use in Correctional Facilities**

FCC 17-25

GN Docket No. 13-111

Released March 24, 2017

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order* in GN Docket No. 13-111, *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, the Commission adopted rules to facilitate the deployment of different technologies used to combat contraband wireless devices in correctional facilities nationwide. Inmates have used contraband wireless devices to order hits, run drug operations, operate phone scams, and otherwise engage in criminal activity that endangers prison employees, other inmates, and innocent members of the public. The use of contraband wireless devices by inmates has grown within the U.S. prison system parallel to the growth of wireless device use by the general public.

The Commission adopted rules in the *Report and Order* to facilitate the deployment of Contraband Interdiction Systems (CISs)¹ by streamlining the Commission's processes for obtaining authorization for such systems' use of spectrum. As background, because the spectrum required by CISs has already been licensed for the exclusive use of Commercial Mobile Radio Service (CMRS) carriers, CIS providers must first obtain the permission of those carriers, typically by entering into spectrum leasing arrangements. Under Commission rules prior to the *Report and Order*, those leasing arrangements could not be finalized until the CIS provider completed an application or notification process (depending on the degree of spectrum control that the agreement would give the operator). In addition, the CIS provider was also required to obtain Commission approval for providing a different class of service than that which the CMRS carrier was authorized to provide (*i.e.*, to provide private rather than common carrier service²). In addition, if the CIS provider wanted to begin operations prior to final agency sign-off on all these requests, the CIS provider would need to file yet another request and receive FCC approval for Special Temporary Authority (STA) to operate the CIS pending FCC approval of the request for private service operations, and, for leases involving a transfer of control, FCC approval of the lease. To expedite the necessary authorizations and simplify this cumbersome process, the Commission modified the rules as follows: implemented immediate processing and disposition of qualifying CIS spectrum leasing applications or notifications; permitted a CIS provider to specify private operations as part of its lease approval application or lease notification to the Commission; and streamlined the process for obtaining STAs for these systems by creating internal procedures for immediate processing without the need for prior public notice. These rule changes minimize regulatory barriers to CIS deployment, maintain an effective spectrum leasing review process, and continue to ensure that service to wireless devices outside of correctional facilities will not be disrupted.

II. COMPLIANCE REQUIREMENTS

The following bullets summarize the actions that the Commission took in the *Report and Order* to

¹ To date, CISs generally take the form either of a Managed Access System (MAS) or an advanced detection system. More specifically, in the *Report and Order*, the Commission utilized the term "CIS" to refer to any system that transmits radio communication signals comprised of one or more stations used only in a correctional facility exclusively to prevent transmissions to or from contraband wireless devices within the boundaries of the facility and/or to obtain identifying information from such contraband wireless devices. We continue to rely on that usage for purposes of this Guide.

² This request took the form of a modification application to claim operations as a Private Mobile Radio Service (PMRS) rather than a CMRS, which is the common carrier classification under which the lessor carriers operate.

streamline the approval process for operating a CIS and to fine-tune the related compliance requirements:

- revised rules to enable the immediate processing of lease applications or notifications for CISs regardless of whether the approval or acceptance (a) will result in the lessee holding or having access to geographically overlapping licenses, or (b) will involve a license subject to designated entity unjust enrichment provisions or entrepreneur transfer restrictions;
- granted a waiver of Section 20.9 to the extent necessary so that CIS providers will not be required to file a separate modification application to reflect PMRS regulatory status subsequent to approval or acceptance of the lease;³
- amended rules to require CISs to route 911 calls to the local PSAP unless the PSAP does not wish to receive the calls, and clarified that where a lessee is a CIS provider, that provider (and not the CMRS licensee leasing the spectrum to the CIS provider) is responsible for compliance with E911 obligations;
- exempted CIS providers seeking an STA from the requirement that they file the STA application ten (10) days prior to operation;
- provided 45 days for lease agreement negotiations between CMRS licensees and CIS operators, plus a 10-day response period, after which the Commission may issue an STA to the CIS provider if the CMRS licensee has failed to negotiate in good faith and in a timely fashion;
- required CIS providers to give notice to surrounding communities 10 days prior to deployment; and
- designated an FCC ombudsperson on contraband wireless device issues, to serve as the Commission's single point of contact for helping CIS providers and CMRS licensees comply with their regulatory obligations.

A. Streamlined Spectrum Leasing Application Approval and Notification Processing (47 CFR §§ 1.9003, 1.9020, and 1.9030)

The Commission's amendments to Sections 1.9003, 1.9020, and 1.9030 streamlined the CIS spectrum leasing process in the following ways:

Elimination of certain eligibility restrictions and requirements that could subject lease approval applications and notifications to greater scrutiny, additional regulatory obligations and/or disapproval

- Authorized immediate processing of CIS spectrum lease applications or notifications regardless of whether the approval or acceptance will result in the lessee holding or having access to geographically overlapping licenses. (Previously, an application or notification

³ On December 14, 2017, the Commission amended Section 20.9 of the Commission's rules to eliminate the CMRS presumption that previously required certain regulatees – like CIS providers – to file modification applications in order to reflect PMRS regulatory status. *Amendments to Harmonize and Streamline Part 20 of the Commission's Rules Concerning Requirements for Licensees to Overcome a CMRS Presumption*, WT Docket No. 16-240, Report and Order, 2017 WL 6507163 (rel. Dec. 18, 2017) (*CMRS Presumption R&O*).

implicating such overlap would have been off-lined for further staff scrutiny.)

- Authorized immediate processing of CIS spectrum lease applications regardless of whether they implicate designated entity rules, affiliation restrictions, unjust enrichment prohibitions, or transfer restrictions. The Commission found in the *Report and Order* that such spectrum leasing arrangements are not readily susceptible to abuse by designated entities who might otherwise lease spectrum to ineligible lessees in order to gain some measure of unjust enrichment, and that expedited processing of CIS lease applications will not have an adverse impact on the ability of a small business to participate in Commission processes to acquire spectrum or to provide wireless services.
- The expedited processing only exempts the underlying CIS lease application from processing under general approval procedures; it does not relieve a licensee from its substantive obligations to make unjust enrichment payments. Therefore, while the Commission anticipated in the *Report and Order* that it would be unlikely for unjust enrichment obligations to be triggered by a CIS leasing arrangement, it made it clear that if that occurs, the expedited processing will not insulate a designated entity from its obligations to comply with the unjust enrichment requirements of the rules.

Implementation of Expedited Internal FCC Procedures (“Immediate Processing”) – In the *Report and Order*, the Commission established internal procedures to ensure that qualified spectrum lease filings for CISs are identified and handled according to immediate processing procedures.

- If the spectrum leasing parties submit their lease application or notification for a CIS via the Universal Licensing System (ULS), and the filing establishes that the proposed spectrum lease is for a CIS, is otherwise complete, and the payment of any requisite filing fees has been confirmed, then the Wireless Telecommunications Bureau (WTB) will clear the application or notification for immediate grant or acceptance through ULS processing.
- Approval of lease applications will be reflected in ULS on the next business day after filing the application or notification.
- Upon receipt of approval, spectrum lessees will have authority to commence operations under the terms of the spectrum lease, allowing for immediate commencement of operations provided that the parties have established the approval date as the date the lease commences.
- The Bureau will place the granted or accepted application or notification on public notice and the action will be subject to the Commission’s reconsideration procedures under rule Section 1.106.

Completeness Requirement

- For immediate processing, a CIS spectrum lease application must be sufficiently complete—*i.e.*, it must contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) and include the requisite filing fee.

- A spectrum lease application or notification will not be deemed sufficiently complete if questions exist about the lessee's eligibility or qualification to lease spectrum based on the responses or certifications. Accordingly, such an application or notification will not be eligible for immediate processing.

B. Regulatory Status

PMRS Presumption – The Commission granted a waiver of Section 20.9 to the extent necessary. As a result of the waiver:

- CIS providers are not required to file a separate modification application to reflect PMRS regulatory status, or be subject to the 30-day public notice period applicable to applications to supply certain radio services, subsequent to approval or acceptance of the lease.
- CIS providers are permitted to indicate in the exhibit to their lease applications whether they are PMRS or CMRS for regulatory status purposes, and the approved or accepted spectrum lease will subsequently reflect that regulatory status.
- In the *CMRS Presumption R&O* (FCC 17-167), the Commission amended Section 20.9 of the Commission's rules to eliminate the CMRS presumption that previously required certain regulatees – like CIS providers – to file modification applications in order to reflect PMRS regulatory status.

C. 911 and E911

The Commission's *Report and Order* also amended the rule Section 20.18 911 and E911 requirements for CIS providers who operate as a PMRS, as follows:

- Amended Section 20.18 generally requires CIS providers regulated as PMRS to route all 911 calls to the local PSAP.
- However, when a PSAP informs a CIS provider that the PSAP does not wish to receive 911 calls from a given correctional facility, the CIS provider must abide by that request.
- In addition, CIS providers are not subject to the 911 routing requirement to the extent that they deploy a technology only to obtain identifying information from a contraband wireless device, and not to capture a call from a correctional facility that will either be terminated or forwarded to a serving carrier's network based on contraband status.
- Pursuant to amended rule Section 20.18(r), the CIS provider, and not the CMRS licensee, is responsible for passing through all 911 and E911 calls to the PSAP, unless the PSAP indicates it does not want to receive them. However, pursuant to the amended spectrum leasing rules in Sections 1.9020 (spectrum manager leasing arrangements), 1.9030 (long-term *de facto* transfer leasing arrangements), and 1.9035 (short-term *de facto* transfer leasing arrangements), if any other 911 and E911 obligations contained in Section 20.18 (a)-(q) (i.e., other than the obligation to pass calls through) apply to the CMRS licensee, the licensee retains those obligations with respect to the leased spectrum.
- The 911 call forwarding requirement and related leasing rule amendments addressing E911 call responsibilities became effective on February 12, 2018.

D. Streamlined Special Temporary Authority Request Processing (47 CFR § 1.931)

The Commission's *Report and Order* streamlined the processing of STA requests in the following ways.

- The amended Section 1.931 of the Commission's rules exempts CIS providers seeking STA for their systems from the requirement that they file their application ten days prior to operation.
- Qualifying STA requests for CISs will be processed on an expedited basis and without prior public notice, in the same way that the Commission intends to process lease applications and notifications – i.e., STA filings will be reviewed by WTB to assess whether the filing is for a CIS and to determine whether the filing is entitled to immediate processing.
- An entity seeking to deploy a CIS in a correctional facility without carrier consent may be granted an STA if, after a 45-day period from CIS provider's initial request, WTB determines that a CIS provider has been negotiating over a lease agreement in good faith, and the CMRS licensee has not.
- The electronic filing requirement under Section 1.913 of the Commission's rules will be waived, so that licensees of licenses authorized on a geographic basis seeking STA for CIS operation in a correctional facility are not required to request a waiver of the requirement with their manual applications.

E. Steps to Ensure Good Faith Negotiations (47 CFR § 20.23(a))

- CMRS licensees are required to negotiate in good faith with entities seeking to deploy a CIS in a correctional facility. Upon receipt of a good faith request by an entity seeking to deploy a CIS in a correctional facility, a CMRS licensee must negotiate in good faith toward a lease agreement.
- If, after a 45-day period there is no agreement, CIS providers seeking an STA to operate in the absence of CMRS licensee consent may file a request for STA with WTB. This request for an STA should be accompanied by evidence demonstrating that the CIS provider negotiated in good faith, and that the CMRS licensee's actions in such negotiations were unreasonable.
- When the CIS provider files a request for STA with WTB, the provider should at the same time serve a copy of the request on the CMRS licensee.
- CMRS licensees will be given 10 days to respond to requests filed with the WTB from CIS providers seeking an STA to operate in the absence of CMRS licensee consent.
- If WTB determines that the CIS provider—but not the CMRS licensee—has negotiated in good faith, WTB may issue an STA to the entity seeking to deploy the CIS, notwithstanding lack of accompanying CMRS licensee consent. WTB will consider evidence of good faith negotiations on a case-by-case basis.
- Examples of factors to be considered by WTB when determining whether there is good faith can be found in 47 CFR § 90.677(c) and 47 CFR § 76.65(b). Such factors include [insert a few highlights from the cited rules for ease of reference]. Such factors might also include whether the parties entered into timely discussions while providing appropriate points of contact and whether a model lease with reasonable terms was offered.

- All CMRS licensees should actively cooperate with CIS providers to simplify and standardize lease agreements and the negotiation process as much as possible, and pursuant to reasonableness standards. Consistent with these efforts carriers are encouraged to develop template lease agreements for CIS deployment.
- The Commission stated that it may take additional steps as necessary to authorize CIS operations if it determines there is continued lack of good faith negotiations toward a CIS lease agreement.

F. Community Notification

- Under the amended spectrum leasing rules, 10 days prior to deploying a CIS that prevents communications to or from mobile devices, a lessee must notify the community in which the correctional facility is located.
- Under these amended rules, the notification must comply with the following requirements:
 - contain a description of what the system is intended to do,
 - include the date the system is scheduled to begin operating,
 - identify the location of the correctional facility, and
 - be tailored to reach the community immediately adjacent to the correctional facility, including through local television, radio, internet news sources, or community groups, as may be appropriate.
- The notification obligation does not apply for brief tests of a system prior to deployment. By giving the CIS operators flexibility to tailor the notification to the specific community, the Commission expects that the notification costs and burdens will be minimal.
- The operation of a CIS is limited to the specific lease parameters as detailed in the applicable spectrum lease authorization and the Commission will strictly enforce any violation of the Commission's interference protection rules as they apply to the area in the vicinity of the correctional facility.

G. Ombudsperson

CIS providers and CMRS licensees will be provided assistance to facilitate compliance with their regulatory obligations. A Commission-appointed ombudsperson will serve as a single point of contact at the Commission for issues related to contraband wireless devices in correctional facilities and the deployment of technologies used to combat this vital public safety problem.

- The ombudsperson's duties may include, as necessary, providing assistance to CIS providers in connecting with CMRS licensees, playing a role in identifying required CIS lease filings for a given correctional facility, facilitating the required Commission filings (thereby reducing regulatory burdens), resolving issues that may arise during the leasing process, potentially transmitting qualifying request for disabling to wireless providers, and resolving any other issues related to CIS implementation.
- The ombudsperson will also conduct outreach and maintain a dialogue with all stakeholders on the issues important to furthering a solution to the problem of contraband wireless device use in correctional facilities.
- The ombudsperson will maintain a webpage, in conjunction with WTB, with a list of active

CIS providers and locations where CISs have been deployed. With this appointment, the Commission will ensure continued focus on this important public safety issue and will solidify commitment to combating the problem.

- Stakeholders may contact the ombudsperson Charles Mathias at 202-418-1030 or combatcontrabanddevices@fcc.gov.⁴

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Report and Order* contains new information collection requirements for CIS providers.

- The community notification requirement adopted in the *Report and Order* requires small entity CIS providers to give notice to the surrounding community 10 days prior to deployment of the system. The notification must include a description of what the system is intended to do, the date the system is scheduled to begin operating, and the location of the correctional facility. CIS providers also must tailor the notification in the most effective way to reach the potentially impacted community and are able to choose the means of communication that is most appropriate for the particular community.
- CIS providers do not have to file additional forms demonstrating that they will be operating as a CIS in order to receive expedited processing. Instead, the Commission implemented its own internal procedures for identifying those qualifying applications and processing the request immediately.
- The Commission implemented similar internal procedures for identifying STA requests for CISs as exempt from the requirement that they file the application ten days prior to operation, thereby furnishing immediate processing without imposing new or additional filing burdens on CIS providers.
- With the waiver of Section 20.9, the Commission also eliminated for CIS providers the requirement to file a separate modification application to request PMRS treatment, thus conserving resources and reducing burdens on spectrum leasing parties.
- Small entities seeking to deploy CIS in correctional facilities will not incur additional or significant recordkeeping or reporting burdens as a result of the rules adopted in the *Report and Order*. The Commission has maintained the current Forms 601 and 608 required for lease filings and provide for expedited processing without imposing any additional filing requirements.

IV. IMPLEMENTATION DATE

The following rules in the *Report and Order* became effective June 19, 2017, thirty (30) days after publication of the text or summary thereof in the Federal Register: 47 CFR §1.931(a)(1) and (a)(2)(v), 47 CFR §1.9003, 47 CFR §1.9020(e)(2), (e)(2)(ii), (e)(2)(iii), and (e)(2)(iv), and 47 CFR §1.9030(e)(2), (e)(2)(ii), (e)(2)(iii) and (e)(2)(iv).

The following rules in the *Report and Order* required approval by the Office of Management and

⁴ Wireless Telecommunications Bureau Names Ombudsperson for Issues Related to Combating Contraband Wireless Devices, GN Docket No. 13-111, Public Notice, DA 17-290 (WTB Mar. 28, 2017).

Budget (OMB): (1) 47 CFR §§ 1.9020(d)(8), 1.9030(d)(8), 1.9035(d)(4), and 20.18 which contain information collections, and (2) 47 CFR §§ 1.9020(n), 1.9030(m), 1.9035(o), 20.18, and 20.23(a). The following rules became effective on October 20, 2017, upon publication of a notice in the *Federal Register* announcing approval by OMB under the Paperwork Reduction Act: 47 CFR §§ 1.9020(n), 1.9030(m), 1.9035(o), 20.18, and 20.23(a). The following rules in the *Report and Order* became effective February 12, 2018, two hundred seventy (270) days after publication of the text or summary thereof in the *Federal Register*: Sections 47 CFR §§ 20.18, 1.9020(d)(8), 1.9030(d)(8), and 1.9035(d)(4).

V. INTERNET LINKS

A copy of the *Report and Order* is available at:

https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-25A1.docx
https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-25A1.pdf
https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-25A1.txt.

A copy of the *Federal Register* Summary of the *Report and Order* is available at:

<https://www.gpo.gov/fdsys/pkg/FR-2017-05-18/pdf/2017-09885.pdf>.